

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DANIELLE MALMQUIST,)	
)	
Plaintiff,)	
)	
v.)	No. 15-cv-2120-STA-tmp
)	
JERRY STOKES, TENNESSEE)	
CIRCUIT COURT JUDGE,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

Before the court is the Motion for Entry of Default filed by plaintiff Danielle Malmquist on April 2, 2015. (ECF No. 11.) Malmquist argues that more than twenty-one days had elapsed since she sent by certified mail service of process on defendant Tennessee Circuit Court Judge Jerry Stokes on February 28, 2015, without a response from Judge Stokes. Malmquist argues that under Federal Rule of Civil Procedure 12, a defendant must serve an answer or otherwise respond within 21 days after being served with the summons and complaint, and that his failure to do so entitles her to an entry of default under Rule 55. Judge Stokes filed a response in opposition on April 2, 2015. (ECF No. 12.) Judge Stokes attached as an exhibit a certified mail tracking slip indicating that he did not receive the summons until March

17, 2015. (ECF No. 12-1.) Thereafter, Judge Stokes filed a motion to dismiss on April 7, 2015. (ECF No. 13.) Judge Stokes's motion to dismiss was filed within 21 days after he received the summons. See Ude v. Univ. of Tenn., No. 3:12-CV-399, 2013 WL 1209619, at *3 (E.D. Tenn. Mar. 25, 2013) (calculating the date on which a response was due as 21 days after the summons and complaint were *received by* defendant); Fite v. Comtide Nashville, LLC, 686 F. Supp. 2d 735, 746 (M.D. Tenn. 2010) (noting that under Tennessee Rule of Civil Procedure 4, service of process by certified mail delivery is not effective unless and until the package is actually received and signed for by the defendant). Because Judge Stokes timely filed his motion to dismiss, it is recommended that Malmquist's motion for default be denied.

Respectfully submitted,

s/ Tu M. Pham
TU M. PHAM
United States Magistrate Judge

June 9, 2015
Date

NOTICE

WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THIS REPORT AND RECOMMENDED DISPOSITION, ANY PARTY MAY SERVE AND FILE SPECIFIC WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS. ANY PARTY MAY RESPOND TO ANOTHER PARTY'S OBJECTIONS WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A

COPY. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2); L.R. 72.1(g)(2). FAILURE TO FILE OBJECTIONS WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND FURTHER APPEAL.